IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4705 of 1987

with

SPECIAL CIVIL APPLICATION Nos. 3123 of 1989,
7529 of 1991, 10201 of 1998, 8367
and 8368 of 2001

with

CIVIL APPLICATION No. 1998 of 1992
and
CIVIL APPLICATION No. 8763 of 2002

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

V.R.SEJPAL
SINCE DECEASED THROUGH
HIS HEIRS & L.R.

Versus

STATE OF GUJARAT AND ANOTHER

Appearance:
1. Special Civil Applications:
MR PV HATHI for Petitioner No. 1-1/4

MR PD BHATE, ASSISTANT GOVERNMENT PLEADER
for Respondent Nos. 1-2
2. Civil Applications:
MR PV HATHI for Petitioner No. 1
MR PD BHATE, ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 13/04/2005

ORAL JUDGEMENT

1. In this Group of Six Petitions, under Article 226 of the Constitution of India, common question is raised, and, therefore, upon joint request they are being disposed of by this common judgment, simultaneously.

2. It is, really, very unfortunate and painful to observe, at the outset, that in this Group of Petitions, despite the guidelines, the die-hard attitude and the gross indifferenceness of the concerned bureaucracy in the Government, has led the petitioners to once again seek the judicial redressal by knocking the doors of justice, by invocation of the writ jurisdiction, as their legitimate benefits of service and the employment have been denied, and the orders of the Government and the directions of this Court have been ceaselessly bypassed. What a travesty of justice! The petitioners are not, only, Senior Citizens, but are also very seniors amongst the class of Senior Citizens, who, instead of going to the temple of God, are running from pillar to post, by rushing to the temple of Justice. If one has to study and make an effective research on the protraction in legal battle, probably, this Group of Petitions may turn out to be a very fertile and useful material.

3. Let there be first a narration of material and relevant facts with a view to appreciating, evaluating and adjudicating, easily, the avoidable controversy in this Group of Petitions, which goes only to show that the entire chequered history of the petitioners' cases, are full of wounds of vortex, that have emerged, unequivocally, in the form of the following aspects:

(i) By Ordinance No. 57 of 1949, the Raj Pramukh of the Saurashtra State constituted a statutory body known as the "Saurashtra Gram Panchayat Madhyastha Mandal" ("MANDAL"), for a noble

purpose and design i.e.to encourage and establish the concept and philosophy of Gram Panchayats and their good management and administration.

(ii) The petitioners came to be appointed to various posts created on the staff and establishment of the said Mandal and, also, later on, confirmed with effect from the date of their appointments i.e. 1st November, 1950.

(iii) Upon the merger of Saurashtra State on 1st November, 1956, the Mandal remained in existence till the "Bombay Village Panchayats Act, 1958" ("PANCHAYATS ACT") was enacted by the legislature of the bilingual Bombay State. The Act was brought into force, on 1st June, 1959. The said Mandal, thus, came to be dissolved in view of the provisions of Section 185 of the Panchayats Act, 1958, which provided for its repeal, whereas in Section 186, necessary provisions were made in respect of the officers and the servants of the said Mandal.

(iv) On 4th December, 1965, the State Government made an order stating that the officers and the servants working in the dissolved Mandal were to be absorbed in the concerned Department under the provisions of the Panchayats Act and that the question of finally absorbing them in the Cooperative Department was under consideration along with a statement that the 28 employees of the erstwhile Mandal named in the statement accompanying the said order were absorbed on the various posts. It was further stated in the said order that the service of such employees, prior to 1st June, 1959, would also be taken into consideration for the purpose of pension, leave and fixation of salary. With a further clarification that only for the purpose of seniority, the reckoning date will be 1st June, 1959, treating the said date as the date of appointment for a limited purpose of the seniority.

(v) Since the question of final absorption was not resolved, the Government, in its Health and Family Department, again issued the order, dated 25th October, 1967, partially modifying the order dated 4th December, 1965, and it was specifically directed that even in the matter of seniority of the absorbed employees of the erstwhile Mandal,

the relevant date would be the date of each concerned servants confirmed in their respective posts in the service of the erstwhile Mandal. The Resolution, dated 25th October, 1967, issued by the then Government, is, also, placed on record.

(vi) By virtue of order dated 25th October, 1967, subsequent to order dated December 4, 1965, issued by the State of Gujarat, in its Panchayat and Health Department, a partial modification came to be made. It directed that even in the matter of seniority of the absorbed servants of the Mandal, the relevant date would be the date on which the concerned servants were confirmed in their respective posts in the Mandal.

(vii) Again on December 31, 1970, the Registrar of the Cooperative Societies, Gujarat State, issued a final Seniority List of Class-III Government Servants of the Cooperative Department as on 1st April, 1962. Of course, para-III of the communication, which accompanied the said Seniority List, did mention that the list was subject to modification, if any, which might be required to be made as and when Seniority List as on November 1st, 1956, was finalised by the Registrar. It is, clearly, mentioned in the said Seniority List, as per the Government Order dated 4th December, 1965, the seniority of the absorbed servants Mandal was fixed in the said list, treating such persons as having been appointed in the corresponding posts in the Cooperative Department as on June 1st, 1959.

(viii) Again, on July 16, 1971, the Registrar published a provisional Seniority List of Class III Government Servants of the Cooperative Department as on June 1st, 1967. In the letter accompanying the said Seniority List, it was clarified that the list was subject to the modification, if any, that may have to be made on account of finalisation of the Seniority List as on November 1st, 1959 and it was subject to the Writ Petitions, which were pending in the Supreme Court and the High Court. In the Seniority List, it was further clarified that the criteria followed was that the seniority of the absorbed servants of the Mandal was fixed after they had entered the Cooperative Department of the Government on June 1st, 1959 in the order of

absorption. Unfortunately, despite this clear order, the question of fixity of seniority of the petitioners from the date of their confirmation remained under the consideration for long.

(ix) It will, also, be material and relevant to highlight here, at this juncture, that following the said Seniority List as the foundation, some of the servants of the Mandal were even transferred on reversion. Thereupon, some of the employees initiated a legal battle by filing a Writ Petition, being Special Civil Application No.1672 of 1971 in this Court `inter alia' praying for a direction to the Government to fix the seniority in accordance with the principles stated in the Government Order dated December 4, 1965, as modified by the Government Order dated October 25, 1967, that is to say that by taking into consideration their services from the date of their confirmation in the corresponding posts in the Mandal and that the order of transfer on reversion of some of the employees came to be made on the basis of the challenged Seniority List should be declared illegal and void and without any effect. The said petition came to be decided by this Court in favour of the employees, who were the petitioners in the said petition.

4. At this stage, it would be most appropriate to reproduce the relevant provisions of the Panchayats Act, while dealing with this Group of Petitions:-

(A) Sub-section (4) of Section 60 of the Panchayats Act, providing for the appointment of a Secretary, which is referred to in Section 186 (14) reads hereasunder:-

"60. (1) to (3)

(4) Every Secretary in the employ of a panchayat or two or more panchayats whether part-time or otherwise on the date of the commencement of this Act shall be deemed to have been appointed under this section and shall, until other provision is made in accordance with the provisions of his Act, receive the salaries and allowances and be subject to the conditions of service to which he

was entitled or subject on such date:

Provided that it shall be competent to the State Government, after giving a Secretary such notice as is required to be given by the terms of his employment, to discontinue this services if in the opinion of the Government he is not necessary or suitable to the requirement of the panchayat service; and every Secretary whose services are so discontinued shall be entitled to such leave, pension, provident fund, gratuity, other rights and privileges as he would have been entitled to take or receive on being invalided out of service if he had continued in the employ of the pancyahat or panchayats after the said date."

(B) Sub-section (14) of Section 186 provides for savings in relation to the Saurashtra Ordinance No.57 of 1949. The said sub-section is relevant and material and it reads hereasunder:-

"186. Notwithstanding the repeal of the said laws and the foregoing provisions of this Act -

(1) to (13) *****

(14) the Saurashtra Gram Panchayat Madyastha Mandal constituted under section 45 of the Saurashtra Gram Panchayats Ordinance, 1949, or any District Panchayat Mandal or Taluka Panchayat Mandal appointed by it shall be dissolved and cease to function and any unexpected balances of money in their custody shall vest in the State Government. The provisions of sub-section (4) of section 60 shall, so far as may be

applicable, apply in relation to the officers and servants of the Saurashtra Gram Panchayat Madhyastha Mandal, or the District Village Panchayat Mandal or Taluka Village Panchayat Mandal;

(15) *****

5. It is, thus, very clear from the provisions of sub-section (4) of Section 60 that the servants and the employees of the erstwhile State of Saurashtra were protected thereunder, which is referred to, in sub-section (14) of Section 186, which has been quoted hereinabove with profit.

6. It is, also, necessary to mention that even before the merger of erstwhile State of Saurashtra with the bilingual State of Bombay, on November 1st, 1956, the Mandal was not dissolved. As such, the Commissioner of Rajkot Division was appointed, as the President of the Mandal, by virtue of his office, after the merger. The petitioners, therefore, continued in service of the Mandal even after the merger.

7. The employees and the servants of the Mandal, even after the merger continued in the employment and all the servants of the Mandal were deemed to have been appointed under the provisions of the new Act unless the services of such servants were discontinued as provided in proviso to sub-section (4) of Section 60 of the Panchayats Act, 1958.

8. It is, also, very clear from the said order that the question of their final absorption in the respective Departments was under consideration of the Government and that 28 employees of the Mandal, whose names found mention in the accompanying statement, were absorbed in the various posts mentioned in the column 5 of the said statement.

9. On fixation of seniority of the petitioners, as per the instructions contained in the Government Resolution, dated 25th October, 1967, the petitioners, as such, were entitled to be posted on still higher posts. It is in this context, they continued to make representations on different occasions to the concerned authorities, but in vain. Thus, the petitioners and several other employees, became victims of the

indifferenceness and negative attitude of the concerned Departments and the authorities of the Government.

10. It is in this context, also, it may be referred to that it is the grievance of the petitioners in this Group of Petitions that the concerned officers and authorities of the then Government were allergic to the erstwhile Mandal and the absorption policy of the employees and the officers of the erstwhile Mandal upon the confirmation of the State of Gujarat.

11. The case of the petitioners has been that despite the judicial pronouncement by the Constitutional Court, the respondents failed to comply with the directions of this Court, till July 1982.

12. For the first time, the employees of the erstwhile Madhyastha Mandal were absorbed and assigned seniority in terms of the Government Resolutions, dated 4th December, 1965 and 25th October, 1967 and the Seniority List came to be published. However, the petitioners were assigned and given seniority in different cadres starting from the Cadre of Junior Clerk, and considering the length of service, the petitioners were given 12th May, 1964 as the deemed date of promotion in the higher cadre.

13. It is the contention of the petitioners that they were entitled to the promotion earlier, but were actually promoted very late in absence of Seniority List, which was required to be framed and finalised by the concerned authorities immediately after the formation of the State of Gujarat w.e.f. 1st May, 1960, resulting into a great loss to the petitioners without their fault, and it was due to the failure and non-compliance of the provisions, the guidelines and the directions earlier evolved and granted by the concerned authorities and utter disregard to the provisions of relevant proposition of law and statutory duties cast upon the Government by the provisions of State Reorganisation Act, 1960 and the Rules known as A.G.S. Rules, 1957 framed thereunder.

14. It is, therefore, pleaded by the petitioners that they have suffered loss of experience of the higher posts and emoluments without any fault on their part and for the complete failure and fault of the Department in not absorbing and assigning the seniority to the ex-Saurashtra employees.

15. The petitioners continued to raise their voice and eventually their written grievance before the

concerned officers and the Departments of the Government since 1972, but such efforts ended in smoke and hence, the petitioners were constrained and compelled to invoke the Constitutional Writ redressal by filing these petitions under Article 226 of the Constitution of India.

16. Upon true and correct analysis and appraisal of the provisions in the backdrop of the factual profile as well as the aforesaid two decisions of this Court, it is apparent, as well as, unequivocally, manifested that the petitioners have become victims of great injustice for a very long spell without their fault and only because of the dogmatic bureaucratic approach and the unhealthy syndrome in the culture of the Government Servants of indifferenceness, apathetic attitude, etc..

17. Despite clear mandatory directions contained in the earlier two decisions of this Court, it is, really, very unfortunate that the petitioners, who have acquired seniority even in the list of Senior Citizens, have been denied their rightful seniority-claim by respondent authority, in utter violation and disregard of the provisions and the orders heralded, hereinabove, in this judgment and, also, in clear violation of the directions of this Court in the aforesaid two decisions. What a great pity and paradox! In this denial of the rightful claim of seniority of the Senior Citizens of the State, protected and provided in the aforesaid provisions and orders of the Government, the violators are none but the propounders of such provisions.

18. Who can then even remotely doubt that this is not one of the fittest of fit cases, wherein, exemplary costs must be paid by the respondent authority, within a stipulated period before the Registry of this Court, to each of the petitioners, who have been dragged into a vortex of wounds, beyond healing and in a long legal conduit pipe of avoidable procedure; over and above, for the non-compliance of the earlier directions, given by this Court in two decisions and the directions issued in this judgment, without any further loss of time, as the certainty of limited life is the only guarantee in the human life.

19. In the result, this Court has no hesitation in finding that the petitioners are fully entitled to the claims made by them in this petition, and the respondents are, therefore, directed to pass necessary consequential orders, expeditiously, on the basis of the deemed date of promotion assigned to the petitioners i.e.12th May, 1964 on the following aspects but not later than 19th June,

2005 and to place the compliance orders before the Registrar of this Court:-

(i) The payment of difference of salary from the said date;

(ii) The fixation of pay;

(iii) The pay-scale revised from time time; and,

(iv) The deemed date of promotion in the Higher Post in the Cooperative Department.

20. If the Registrar does not receive, on or before 27th June, 2005, such orders, in respect of the petitioners, the Registry is directed to apprise this Court for further necessary consequential directions to the respondent-authority for making payment of all the amounts due and payable to the petitioners, after deducting the amount, if any, paid during the pendency of the legal battle before this Court along with the rate of interest, as per the prevalent Government Resolutions and Circulars.

21. The petitions shall stand, accordingly, allowed. Rule made absolute and with costs of Rs.10,000/= (Rupees Ten Thousand Only) in view of rarest of rare reasons and special and uncommon circumstances and unduly delay, despite directions in two decisions of this Court and harm suffered by Senior Citizens without their faults, to each petitioner to be paid by the respondent-authority on or before 19th June, 2005, failing which the Registry shall appropriately bring this aspect to the notice of the Court. The Civil Applications, also, shall stand disposed of accordingly.

(DR. J. N. BHATT, J.)

/shamnath